

CHAPTER 60

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS

Part IIIA

Local Programs

4VAC50-60-100. Applicability. Repeal

4VAC50-60-110. Technical criteria for local programs. Repeal

4VAC50-60-120. Requirements for local program and ordinance. Repeal

4VAC50-60-130. Administrative procedures: stormwater management plans. Repeal

4VAC50-60-140. Administrative procedures: exceptions. Repeal

4VAC50-60-150. Administrative procedures: maintenance and inspections. Repeal

4VAC50-60-102. Authority and Applicability.

In accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., the Board is authorized to delegate to an approved locality the administration of a local stormwater management program. Pursuant to §10.1-603.4, the Board is required to establish standards and procedures for such a delegation. Delegation shall follow the adoption of a local stormwater management program by a locality in accordance with §§10.1-603.3 A or B and the Board's deeming of such program as consistent with the Virginia Stormwater Management Law and these regulations in accordance with §10.1-603.3 F.

This part specifies the minimum technical criteria for a locality or a Department-administered stormwater management program and the requirements of a local government ordinance regarding a stormwater management program. Such criteria include but are not limited to administrative, plan review, permit issuance, inspection, and enforcement, and education and outreach components.

4VAC50-60-104. Technical criteria for local programs.

A. All local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. ~~When a A~~ locality ~~that operating a delegated local stormwater management program~~ has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan ~~may request, in writing, that~~ the Department ~~shall~~ consider these requirements in its review of state projects within that locality in accordance ~~with Part IV of these regulations (4VAC50-60-160 et seq.).~~

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

~~D. When reviewing a federal project, the Department shall apply the provisions of this chapter.~~

4VAC50-60-106. Local Program Administrative Requirements.

- A. A local stormwater management program shall provide for the following:
1. Identification of the permit issuing authority, the plan approving authority, the inspection authority, and the enforcement authority;
 2. Regulations and technical criteria to be used in the stormwater management program;
 3. Procedures for the submission and approval of plans;
 4. Procedures for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of stormwater permits;
 5. Assessment and collection of fees;
 6. Inspection and monitoring of land disturbing activities for compliance;
 7. Procedures for long-term BMP monitoring;
 8. Enforcement.

B. A locality shall adopt an ordinance that incorporates the components set out in subsection A.

C. A local program shall report to the Department information related to the administration and implementation of the local program, in a method and on a time schedule established by the Department.

D. A local program may require the submission of a reasonable performance bond or such other financial surety and for the release of such sureties in accordance with the criteria set forth in §10.1-603.8.

~~E. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.~~

4VAC50-60-108. Local program stormwater management plan review.

A. A locality shall require new or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. Localities shall approve or disapprove a complete stormwater management plan according to the following:

1. Localities shall begin stormwater management plan review upon submission of a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of all persons having a legal interest the property owner and the operator in of the property and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and the mechanism through which how the BMPs will be operated and maintained during and after construction;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties for the hydrologic and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations

(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

e. Overall site plan that identifies the location of **potentially impacted** state waters and that includes pre-developed and post-developed conditions for drainage areas including final drainage patterns and changes to existing contours;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations; and

j. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. Upon receipt of a plan, the locality shall have 15 **calendar** days to determine the **administrative** completeness of the plan **and notify the applicant of its determination**. If a plan is deemed to be **administratively** incomplete based on the criteria setout in subsection **B1** of this section, the locality must identify in writing the reasons the plan is deemed deficient. **If a locality does not make a determination within the 15 calendar days, the plan shall be deemed administratively complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.**

3. **Upon receipt of a complete the determination that a plan is administratively complete,** a maximum of 60 calendar days will be allowed for the review of the plan.

4. During the **60-day** review period, the locality shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.

4. A disapproval of a plan shall contain the reasons for disapproval.

5. If no action is taken by the locality within the time specified above, the plan shall be deemed approved.

C. An **initial** stormwater management **concept** plan may be submitted to a locality, **if allowed by the local program**, for review and approval when it is accompanied by an approved erosion and sediment control plan and **preliminary stormwater design for the current and future site work**. Such **conceptual initial** plans shall be limited to the initial clearing and grading of the site. **A concept An initial** plan does not supercede the need for the submittal and approval of a complete stormwater management plan. The following information in the **concept initial** plan shall include, **but not be limited to**:

1. A map(s) indicating the location of the natural resources and structures at the site and surrounding area as it exists prior to the commencement of the project. This map(s) shall also include an identification of the limits of clearing and grading, existing and proposed drainage patterns, perennial streams, soil types, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

The map(s) may also include proposed buildings, roads, parking areas, utilities, and stormwater management measures. The map(s) may also show proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to; planned locations of utilities, roads and easements.

2. A narrative shall accompany such map(s) describing the elements setout in subsection 1. Acreages shall be provided for the overall site, limits of clearing and grading, wetlands, and riparian areas. Such narrative shall include a justification of proposed changes in the sites natural conditions.

D. Each plan approved by a locality may be changed in accordance with the following:

1. Changes to an approved plan shall be allowed only after the review and written approval of the plan approving authority.

2. If field inspection shows that a plan is not adequate, the person responsible for the development project may request modifications to the approved plan to address noted deficiencies. The plan approving authority shall respond in writing either approving or disapproving such request.

3. The plan approving authority based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

4VAC50-60-112. Local program issuance of VSMP General Permit for Discharges of Stormwater from Construction Activities.

A. A locality shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in a format determined by the Department and in accordance with the following:

1. The applicant must have an approved **conceptual initial** stormwater management plan or an approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities and the registration statement has been reviewed and approved by the local program authority.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

B. The locality shall report VSMP general permit information to the Department in accordance with 4VAC50-60-126.

4VAC50-60-114. Local program inspections.

A. A local program shall conduct inspections of stormwater management BMPs during construction to ensure that the location and design criteria of the BMPs are in accordance with the approved plan.

B. A local program shall require the person responsible for the development project to submit a final report containing an as-built survey certifying that the stormwater management BMPs **requiring maintenance** have been implemented in accordance with the approved plan. The local program shall inspect the BMPs for compliance with the final report.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

C. A local program shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement and provide a written report to the local program administrator.

D. A local program shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
4. Demonstrated to be an enforceable inspection program conducted by the locality that meets the intent of the regulations; and
- 4 5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the local program.

F. The local program shall be allowed by the operator to conduct periodic inspections of the project.

4VAC50-60-116. Local program enforcement.

A. A local program shall incorporate the following components:

1. Informal and formal administrative enforcement procedures including:
 - a. Verbal warning and inspection reports;
 - b. Notice of corrective action;
 - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;
 - d. Notice to comply in accordance with § 10.1-603.11;
 - e. Special orders in accordance with § 10.1-603.2:1 7;
 - f. Emergency special orders in accordance with § 10.1-603.2:1 7; and
 - g. Public notice and comment period pursuant to 4 VAC 50-60-660.
2. Civil and criminal judicial enforcement procedures including:
 - a. Schedule of civil penalties setout in subsection D;
 - b. Criminal penalties in accordance with § 10.1-603.14 B and C; and
 - c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1

B. A local program shall develop a policy and procedures manual that outlines the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations, and local ordinance.

C. A local program may utilize the Department's Stormwater Management Enforcement Manual as guidance in establishing policy and procedure manuals.

D. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14 A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP)</u> <u>[No SWPPP components including erosion and sediment (E&S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

* The frequency of occurrence is a maximum of per day per violation.

** Each BMP and E&S control not installed constitutes a separate violation

E. Pursuant to § 10.1-603.2:1 2, delegation shall not remove from the Board authority to enforce the provisions of the stormwater management law and attendant regulations.

4VAC50-60-118. Hearings.

~~A.~~ A local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and -

~~B. A local program~~ shall ensure that all hearings held under this Chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

4VAC50-60-122. Local program: exceptions.

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the permit issuing authority. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the permit issuing authority grant an exception to the requirement that the land disturbing activity obtain a permit.

4VAC50-60-124. Local program: BMP maintenance.

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be transferred or conveyed, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements satisfactory to the local program shall be made to ensure continued performance ~~in accordance with of this chapter.~~

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the local program has the authority to perform the work and to recover the costs from the owner.

D. The local program shall require right-of-entry agreements or easements from the owner for purposes of inspection and maintenance.

E. The local program shall ensure that the flow and drainage patterns associated with a permanent BMP are maintained. Proposed changes to the flow and drainage patterns must be approved by the local program.

4VAC50-60-126. Local program: reporting and record keeping.

A. A local program shall report in a format provided by the Department on a monthly basis. The information to be provided shall include but not be limited to the following:

1. Permitted project information ~~for the month~~ to include permit number, operator name, activity name, acres disturbed, date of permit coverage;

2. Permitted projects terminated for the month to include permit number, operator name, activity name, and date of permit termination;

3. Information on each permanent BMP installed ~~in the month~~ to include location, acres treated, and the state waters ~~into which~~ the BMP will discharge ~~into~~;

4. Number of ~~VSMP general permit projects inspected and the number of~~ inspections ~~for the month~~;

5. Number and type of ~~VSMP general permit~~ enforcement actions ~~for the month~~; and

6. Number of exceptions applied for and whether granted or denied ~~for the month~~.

B. A local program shall keep records in accordance with the following:

1. Permit files shall be kept by the local program for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the local program in perpetuity.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

Part IIIB

Department of Conservation and Recreation administered local programs

4VAC50-60-128. Authority and Applicability.

In the absence of delegation to a locality, the Department shall administer the local stormwater management program in accordance with §10.1-603.3 C. This part specifies the minimum technical criteria for a Department-administered stormwater management program in accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., and the standards and criteria established in these regulations by the Board pursuant to its authority under that article. Such criteria include but are not limited to administrative, plan review, inspection, enforcement, and education and outreach components.

4VAC50-60-132. Technical criteria for Department-administered local programs.

A. The Department administered local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. When the Department administers a local program in a locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan Department may consider these requirements in its review of projects within the locality.

B. When reviewing a federal project, Department shall apply the provisions of this chapter.

4VAC50-60-134. Department-administered local program Administrative authorities.

A. The Department is the permit issuing authority, plan approving authority, and the enforcement authority.

B. The Department or its designee is the plan reviewing authority and the inspection authority.

C. The Department shall assess and collect fees.

D. The Department may require the submission of a reasonable performance bond or such other financial surety in accordance with the criteria set forth in §10.1-603.8 prior to the issuance of the general permit and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the applicant in accordance with the approved stormwater management plan;

3. If the Department takes such action upon such failure by the applicant, the Department may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

4. Within sixty days of the completion of the requirements of the VSMP permit conditions and the Department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit or other legal arrangement shall be refunded to the applicant.

E. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

4VAC50-60-136. ~~Department administered local program~~ Stormwater management plan review.

A. The Department shall require new or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. The Department ~~or its designee~~ shall approve or disapprove stormwater management plans according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan.
A. ~~An initial~~ stormwater management ~~concept~~ plan or clearing and grading plan shall not be considered a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of ~~all persons having a legal interest the property owner and the operator in of the property~~ and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and ~~the mechanism through which how~~ the BMPs will be ~~operated and~~ maintained ~~during and after construction~~;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties for the hydrologic and structural properties of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. Overall site plan that identifies the location of ~~potentially impacted~~ state waters and that includes pre-developed and post-developed conditions for drainage areas including final drainage patterns and changes to existing contours. At a minimum, ~~this will include a topographic base map utilizing 5 foot or less contour intervals of the site~~ ~~this will include a topographic a scale map of 1" = 200'~~ ~~topographic base map of the site~~ which includes all contributing drainage areas and downstream receiving areas of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown necessary to meet the requirements of this chapter;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations;

j. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan; and

k. The person responsible for the development project shall provide proposed right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

2. Upon receipt of a plan, the Department or its designee shall have 15 calendar days to determine the administrative completeness of the plan and notify the applicant of its determination. If a plan is deemed to be administratively incomplete based on the criteria set out in subsection B1 of this section, the Department must identify in writing the reasons the plan is deemed deficient. If the Department does not make a determination within the 15 calendar days, the plan shall be deemed administratively complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.

3. Upon receipt of a complete the determination that a plan is administratively complete, a maximum of 60 calendar days will be allowed for the review of the plan.

4. During the 60-day review period, the Department shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the Department's stormwater management program.

4. A disapproval of a plan shall contain the reasons for disapproval.

5. If no action is taken by the Department within the time specified above, the plan shall be deemed approved.

C. Each plan approved by the Department may be changed in accordance with the following:

1. Changes to an approved plan shall be allowed only after the review and written approval of the Department.

2. If field inspection shows that a plan is not adequate, the person responsible for the development project may request modifications to the approved plan to address noted deficiencies. The Department shall respond in writing either approving or disapproving such request.

3. The Department based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

4VAC50-60-138. Department administered local program Issuance of the VSMP General Permit for Discharges of Stormwater from Construction Activities.

The Department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a Department approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq) and the registration statement has been reviewed and approved by the Department.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

4VAC50-60-142. Department administered local program Inspections.

A. The Department or its designee shall conduct inspections of stormwater management BMPs during construction to ensure that the location and design criteria of the BMPs are in accordance with the approved plan.

B. The Department shall require the person responsible for the development project to submit a final report containing an as-built survey certifying that the stormwater management BMPs requiring maintenance have been implemented in accordance with the approved plan. The Department or its designee shall inspect the BMPs for compliance with the final report.

C. The Department shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement and provide a written report to the Department.

D. The Department or its designee shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
4. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the Department or its designee.

F. The Department or its designee shall be allowed by the operator to conduct periodic inspections of the project.

4VAC50-60-144. Department administered local program Enforcement.

A. A Department administered local program shall contain the following components:

1. Informal and formal administrative enforcement procedures including:
 - a. Verbal warning and inspection reports;
 - b. Notice of corrective action;
 - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;
 - d. Special orders in accordance with § 10.1-603.2:1 7;
 - e. Emergency special orders in accordance with § 10.1-603.2:1 7; and
 - f. Public notice and comment period pursuant to 4 VAC 50-60-660.
2. Civil and criminal judicial enforcement procedures including:
 - a. Schedule of civil penalties setout in subsection C;
 - b. Criminal penalties in accordance with § 10.1-603.14 B and C; and
 - c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

B. The Department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations.

C. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14 A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP)</u> <u>[No SWPPP components including erosion and sediment (E&S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

* The frequency of occurrence is a maximum of per day per violation.

** Each BMP and E&S control not installed constitutes a separate violation

4VAC50-60-146. Hearings.

A. Any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and:

~~B. All~~ all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

4VAC50-60-148. Department administered local program: Exceptions.

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the Department. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this Chapter.

C. Under no circumstance shall the Department grant an exception to the requirement that the land disturbing activity obtain a permit.

4VAC50-60-152. Department-administered Local program: BMP maintenance.

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the Department shall be made to ensure continued performance in accordance with of this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the Department has the authority to perform the work and to recover the costs from the owner.

D. The Department shall require right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

E. The Department shall ensure that the flow and drainage patterns associated with a permanent BMP is maintained and proposed changes to the flow and drainage patterns must be approved by the Department.

4VAC50-60-154. Department-administered local program: Reporting and record keeping.

A. The Department, on a monthly basis, will compile the following information:

1. Permitted project information for the month to include permit number, operator name, activity name, acres disturbed, date of permit coverage;

2. Permitted projects terminated for the month to include permit number, operator name, activity name, and date of permit termination;

3. Information on each permanent BMP installed in the month to include location, acres treated, and the state waters into which the BMP will discharge into;

4. Number of VSMP general permit projects inspected and the number of inspections for the month;

5. Number and type of VSMP general permit enforcement actions for the month; and

6. Number of exceptions applied for and whether granted or denied for the month.

B. The Department shall keep records in accordance with the following:

1. Permit files shall be kept by the Department for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the Department in perpetuity or until the program is delegated.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

Part IIIC

Department of Conservation and Recreation local program review procedures

4VAC50-60-156. Authority and Applicability.

This part specifies the criteria that the Department will utilize in reviewing a locality's administration of a stormwater management program pursuant to §10.1-603.12 following the delegation of a local stormwater management program to that locality by the Board in accordance with the Virginia Stormwater Management Law and these regulations.

4VAC50-60-157. Stormwater Management Program Review.

A. The Department shall periodically review each Board approved program on a review schedule approved by the Board.

B. The Board approved review of a local program shall consist of the following:

1. A personal interview between Department staff and the local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of plans approved by the locality and consistency of application;

4. An inspection of regulated activities; and

5. A review of enforcement actions.

C. To the maximum extent practicable the Department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The Department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the local program of its findings.

E. If the Department determines that the deficiencies noted in the review will cause the local program to be inconsistent with the Stormwater Management Act and its attendant regulations, the Department shall notify the local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the local program fails to take the corrective action within the specified time, the Department may formally request the Board to take action pursuant to §10.1-603.12 of the Code of Virginia.

Part IIID

Virginia Soil and Water Conservation Board delegation procedures for local programs

4VAC50-60-158. Authority and Applicability.

Section 10.1-603.4:1 requires that the Board establish standards and procedures for delegating the authority for administering a stormwater management program to localities. In

Working Draft for Parts IIIA, B, C, and D of the Stormwater Regulations
(Thursday, August 17, 2006– Part III Subcommittee Draft with staff updates)

accordance with that requirement, and with the further authority conferred upon the Board by the Virginia Stormwater Management Law, §10.1-603.2 et seq., this part specifies the procedures the Board will utilize in delegating a stormwater management program to a locality.

4VAC50-60-159. Delegation Procedures for local stormwater management programs.

A. A locality seeking delegation must submit to the Board an application package which, at a minimum, contains the following:

1. The local program ordinance(s) and other applicable documents;
2. A funding and staffing plan;
3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program; and
4. The process by which the locality will collect permit fees and submit for deposit on a monthly basis to the Virginia Stormwater Management Fund.

B. Upon receipt of an application package, the Board or its designee shall have 15 days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria setout in subsection A of this section, the Board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the Board or its designee shall have a maximum of 90 calendar days for the review of the application package. During the 90-day review period, the Board or its designee shall either approve or disapprove the application and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Law and these regulations.